

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SEAN BEST,

Plaintiff,

-against-

THE CITY OF NEW YORK; THE NEW
YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION, et al.

Defendants.

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FEB 03 2022
MEMORANDUM DECISION
AND ORDER

18 Civ. 5973 (GBD) (OTW)

GEORGE B. DANIELS, United States District Judge:

Pro se Plaintiff Sean Best brings this action against the City of New York, the New York State Department of Corrections and Community Supervision, et al. pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act, the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act, and other related state law, alleging violations of constitutional rights while incarcerated and during post-release supervision. On August 14, 2018, claims within Plaintiff's initial complaint against Defendants "Casey," "ADA assigned to case," and "Cheng" were dismissed. On March 24, 2020, Plaintiff's amended complaint was dismissed. Plaintiff was granted 30 days to file a second amended complaint. Plaintiff did not do so.

On July 31, 2020, Magistrate Judge Ona Wang issued an order requiring Plaintiff to show cause why this case should not be dismissed for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure, after the Plaintiff repeatedly failed to update his address on the docket and failed to appear for a status conference on July 21, 2020. Plaintiff did not respond to the

Court's order to show cause or file a second amended complaint by the Court's extended deadline of August 7, 2020.

A court "may accept, reject, or modify, in whole or in part, the findings or recommendations" set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge's report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). "In clear error review, a court should reverse a finding only if it is 'left with the definite and firm conviction that a mistake has been committed,' and not merely if it 'would have decided the case differently.'" *Hernandez v. City of New York*, No. 11 Civ. 6644 (KPF) (DF), 2015 WL 321830, at *2 (S.D.N.Y. Jan. 23, 2015) (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)).

Rule 41(b) authorizes a district court to dismiss an action "[i]f the plaintiff fails to prosecute or to comply with . . . a court order." Fed. R. Civ. P. 41(b). "The primary rationale underlying a dismissal under [Rule] 41(b) is the failure of [a] plaintiff in his duty to process his case diligently." *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 43 (2d Cir. 1982) (citations omitted). District courts consider five factors when deciding whether to dismiss an action under Rule 41(b):

(1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.

Baptiste v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014) (per curiam) (citation omitted).

Here, Magistrate Judge Wang appropriately found that dismissal is warranted. (Report at 2). Plaintiff did not respond to the order to show cause issued on July 31, 2020. (Report at 5.) Nor did Plaintiff file a second amended complaint by August 7, 2020, the deadline set by the Court.

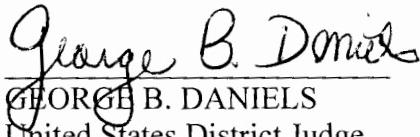
(Report at 6.) Further, Plaintiff failed to update his address on the docket or communicate with the Court in any way since, at least, April 2020. (Report at 6.)

Plaintiff's complaint is dismissed without prejudice.

The Clerk of Court is directed to mail a copy of this memorandum decision and order to Plaintiff.

Dated: February 3, 2022
New York, New York

SO ORDERED.


George B. Daniels
GEORGE B. DANIELS
United States District Judge